



6560-50-P

ENVIRONMENTAL PROTECTION AGENCY (EPA)

40 CFR Part 52

[EPA-R09-OAR-2015-0204; FRL-9974-11-Region 9]

Air Quality State Implementation Plans; Approvals and Promulgations: California; South Coast Moderate Area Plan for the 2006 PM_{2.5} Standards; Correction of Deficiency

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving the Reasonably Available Control Measures/Reasonably Available Control Technology (RACM/RACT) and Reasonable Further Progress (RFP) elements of California's Moderate area plan for the 2006 24-hour fine particulate matter (PM_{2.5}) National Ambient Air Quality Standards (NAAQS or "standards") in the Los Angeles – South Coast nonattainment area. The EPA is also finalizing a determination that the State has corrected the deficiency that formed the basis for the EPA's prior partial disapproval of the Moderate area plan submitted for these NAAQS with respect to the RACM/RACT and RFP elements. Today's action terminates the sanctions clocks triggered by the partial disapproval of the Moderate area plan.

DATES: This rule is effective on **[INSERT DATE 30 DAYS FROM DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: The EPA has established a docket for this action under Docket No. EPA–R09–OAR–2015–0204. All documents in the docket are listed on the <http://www.regulations.gov> Web

site. Although listed on the Web site, some information is not publicly available, *e.g.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <http://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER**

INFORMATION CONTACT section for additional availability information.

FOR FURTHER INFORMATION CONTACT: Wienke Tax, EPA Region IX, (415) 947-4192, tax.wienke@epa.gov.

SUPPLEMENTARY INFORMATION: Throughout this document, "we," "us" and "our" refer to the EPA.

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I. Summary of Proposed Action

On October 10, 2017 (82 FR 46951) we proposed to determine that certain amendments to the South Coast Air Quality Management District's (SCAQMD or "District") Regional Clean Air Incentives Program (RECLAIM) submitted by California corrected the deficiency in the RACM/RACT and RFP elements of the Moderate area plan for the 2006 PM_{2.5} NAAQS in the Los Angeles – South Coast nonattainment area ("2012 PM_{2.5} Plan" or "plan") that was the basis for the EPA's prior partial disapproval of this plan. On this basis, we proposed to approve the RACM/RACT and RFP elements of the 2012 PM_{2.5} Plan, as revised. The 2012 PM_{2.5} Plan contained the State's and District's demonstration that attainment of the 2006 PM_{2.5} NAAQS in the South Coast area by the December 31, 2015 Moderate area attainment date was impracticable.

Simultaneously, we published an interim final determination to defer sanctions based on our proposed finding that the SCAQMD's amendments to RECLAIM corrected the deficiency in the RACM/RACT and RFP elements of the 2012 PM_{2.5} Plan that formed the basis for our prior partial disapproval of this plan (82 FR 46917).

II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period, which ended on November 9, 2017. During this period, we received one comment letter from Earthjustice on behalf of the Sierra Club and several anonymous comments. We summarize these comments and provide our responses below.

Comment #1: Earthjustice claims that a cap-and-trade program such as RECLAIM cannot provide the basis for compliance with the Clean Air Act (CAA or "Act") section 182 RACT requirement or the RACM requirement, based on the plain language of the CAA that, according to Earthjustice, requires all major sources to implement RACT. In support of this contention, Earthjustice highlights the word "all" in CAA section 182(b)(2) in connection with implementation of RACT at major sources and claims that the legislative history for the CAA Amendments of 1990 makes clear that the RACT requirement applies to all major sources of NO_x in an ozone nonattainment area. Earthjustice also cites, without explanation, the RACM requirement for Moderate PM_{2.5} nonattainment areas in CAA section 189(a)(1)(C) and the Best Available Control Measures (BACM) requirement for Serious PM_{2.5} nonattainment areas in 40 CFR 51.1010.

Earthjustice asserts that the EPA's longstanding definition of RACT supports an interpretation of the RACT requirement as applicable to each and every major NO_x source, not a collective emission limitation for an entire class of sources located across a nonattainment area or an entire state or region. Earthjustice claims that reliance on an emissions trading program to meet

the RACT requirement for major NO_x sources is tantamount to creating a NO_x exemption that is inconsistent with the explicit NO_x exemptions found at CAA section 182(f). Lastly, Earthjustice cites an EPA proposed rule dated November 3, 2016 to support its claim that emissions averaging in the South Coast does not actually provide RACT-level reductions.

Response #1: Earthjustice submitted substantively identical comments on a separate proposed rule published June 15, 2017, in which the EPA proposed to determine that the revised RECLAIM regulations satisfy CAA RACT requirements for purposes of the ozone NAAQS in the South Coast ozone nonattainment area (82 FR 27451).¹ We responded to these comments in our September 20, 2017 final rule approving California's RACT state implementation plan (SIP) submission for the South Coast area (82 FR 43850) and incorporate that response here (*see* 82 FR at 43853-54). Because Earthjustice has not explained how its comments pertain to the specific RACM requirement in CAA section 189(a)(1)(C) or the BACM requirement in 40 CFR 51.1010 for purposes of the PM_{2.5} NAAQS, we provide no further response on this issue.

Comment #2: Earthjustice contends that approval of California's RACT determination would be arbitrary and capricious because the RECLAIM rules, as amended in 2015, do not achieve aggregate emissions reductions of NO_x equivalent to those that would be achieved through implementation of RACT level control at each major NO_x source in the South Coast. Earthjustice claims that the record here shows that the additional 12 ton per day (tpd) reduction adopted by the SCAQMD as part of the 2015 RECLAIM amendments does not result in RACT/RACM level controls for NO_x RECLAIM facilities.

¹ Earthjustice's prior comments on this issue are identical to its comments here, except that its latest comments include two unexplained references to "RACM" and unexplained citations to the control requirements for PM_{2.5} nonattainment areas in CAA section 189(a)(1)(C) and 40 CFR 51.1010.

Response #2: Earthjustice submitted substantively identical comments on a separate proposed rule published June 15, 2017, in which the EPA proposed to determine that the revised RECLAIM regulations satisfy CAA RACT requirements for purposes of the ozone NAAQS in the South Coast ozone nonattainment area (82 FR 27451). We responded to these comments in our September 20, 2017 final rule approving California's RACT SIP submission for the ozone NAAQS for the South Coast area (82 FR 43850) and incorporate that response here (*see* 82 FR at 43854-55).

Comment #3: Earthjustice asserts that the EPA's approval of the RACM/RACT and RFP elements of the 2012 PM_{2.5} Plan would interfere with attainment of the PM_{2.5} NAAQS by 2019. Earthjustice claims that the EPA failed to address how an additional 12 tpd reduction in the NO_x RECLAIM emissions cap on a "back-loaded" schedule complies with the District's determination that the reductions are necessary for PM_{2.5} attainment by 2019 or as expeditiously as practicable. It also claims that the record shows that failure to apply the front-loaded emission reduction schedule developed by SCAQMD staff will interfere with expeditious attainment of the 2006 PM_{2.5} NAAQS. Earthjustice also references a program environmental assessment (PEA) completed pursuant to California state law, which listed as a project objective the need to bring the NO_x RECLAIM program up to date with best available retrofit control technology (BARCT) requirements for existing sources under California law, and asserts that the final PEA identified a need to implement additional control measures to attain both the PM_{2.5} and ozone NAAQS in the South Coast air basin.

Response #3: These comments are not germane to this action. Earthjustice suggests that SCAQMD should require reductions from RECLAIM sources on a faster schedule for purposes of attaining the 2006 PM_{2.5} NAAQS by the applicable attainment date for a Serious nonattainment area, *i.e.*, in this case an area that must attain the 2006 PM_{2.5} NAAQS as expeditiously as practicable but no later than the end of 2019. In this action, however, we are not assessing whether

the revised RECLAIM program meets Serious area nonattainment plan requirements such as the BACM/BACT control requirement or, as relevant here, assessing whether the schedule for those reductions is consistent with the requirement to attain the 2006 PM_{2.5} NAAQS as expeditiously as practicable but no later than 2019. This action addresses only a deficiency that the EPA previously identified in the Moderate area plan for the South Coast area.

The 2012 PM_{2.5} Plan contained a demonstration under CAA section 189(a)(1)(B)(ii) that attainment of the 2006 PM_{2.5} standards in the South Coast area by the Moderate area attainment date of December 31, 2015, was impracticable.² We partially approved and partially disapproved the 2012 PM_{2.5} Plan based on a deficiency in its RACM/RACT and RFP elements, both of which relied on the RECLAIM program as amended in 2010.³ Following the State's submission of RECLAIM rule amendments adopted in 2015 and a demonstration that the amended program satisfies NO_x RACT requirements for covered sources,⁴ we proposed to determine that the State had corrected the deficiency in the RACM/RACT and RFP elements of the 2012 PM_{2.5} Plan and to approve these elements of the Plan, as revised (82 FR 46951, October 10, 2017). These SIP revisions corrected a deficiency in an impracticability demonstration, which did not purport to show attainment by 2019. Comments pertaining to the level of control necessary for the South Coast area to attain the PM_{2.5} NAAQS as expeditiously as practicable and no later than the applicable statutory attainment date should be raised in the context of EPA's evaluation of a demonstration of attainment under CAA section 189(a)(1)(B)(i) or section 189(b)(1)(A)(i), not in the context of a

² See 81 FR 22025, 22026 (April 14, 2016).

³ *Id.* at 22027.

⁴ On September 14, 2017, we approved the amended RECLAIM rules into the SIP (82 FR 43176) and on September 20, 2017, we approved the SCAQMD's ozone RACT SIP demonstration for the 2008 ozone NAAQS based, in part, on a determination that major NO_x sources covered by the amended RECLAIM program are now subject to RACT-level controls (82 FR 43850, 43856).

demonstration that attainment by the outermost Moderate area attainment date is impracticable under CAA section 189(a)(1)(B)(ii).

Our reclassification of the South Coast area from Moderate to Serious for the 2006 PM_{2.5} NAAQS in October 2015 triggered a requirement for California to submit a Serious area plan that provides for attainment of the 2006 PM_{2.5} NAAQS in the South Coast as expeditiously as practicable but no later than December 31, 2019, in accordance with the requirements of part D of title I of the Act.⁵ The California Air Resources Board submitted a Serious area plan for the 2006 PM_{2.5} NAAQS in the South Coast on April 27, 2017.⁶ We will evaluate the adequacy of the State's and District's control strategy for purposes of timely attainment when we act on this plan submission.

Comment #4: Earthjustice objects to the District's general approach to distinguishing between BARCT and RACT-level control and argues that the District has used an artificially narrow articulation of RACT to evaluate only controls required under adopted regulations, instead of considering technologies that have been applied in practice.

Response #4: Earthjustice submitted identical comments on a separate proposed rule published June 15, 2017, in which the EPA proposed to determine that the revised RECLAIM regulations satisfy CAA RACT requirements for purposes of the ozone NAAQS in the South Coast ozone nonattainment area (82 FR 27451). We responded to these comments in our September 20, 2017 final rule approving California's ozone RACT SIP for the South Coast area (82 FR 43850) and incorporate that response here (*see* 82 FR at 43855-56).

⁵ 81 FR 22025, 22026 (April 14, 2016) (citing October 20, 2015 reclassification action at 80 FR 63640, 63660).

⁶ *See* letter dated April 27, 2017 from Richard W. Corey, Executive Officer, CARB, to Alexis Strauss, Acting Regional Administrator, EPA Region IX (transmitting Serious area plan for 2006 PM_{2.5} NAAQS to the EPA).

Comment #5: Earthjustice asserts that the revised RECLAIM program does not properly address RECLAIM trading credits from facilities that shut down prior to 2016 and argues that the availability of such credits has allowed major sources, particularly refineries, to avoid installation of selective catalytic reduction and other readily available NO_x pollution controls. Earthjustice identifies California Portland Cement as a retired facility whose credits have significantly contributed to this problem.

Response #5: Earthjustice submitted substantively identical comments on a separate proposed rule published June 6, 2017, in which the EPA proposed to approve the amended RECLAIM rules into the SIP (82 FR 25996), and a proposed rule published June 15, 2017, in which the EPA proposed to determine that the amended RECLAIM rules satisfy CAA RACT requirements for purposes of the ozone NAAQS in the South Coast ozone nonattainment area (82 FR 27451). We responded to these comments in both our September 14, 2017 final rule approving the amended RECLAIM rules (82 FR 43176) and our September 20, 2017 final rule approving California's ozone RACT SIP for the South Coast area (82 FR 43850) and incorporate those responses here (*see* 82 FR at 43178 and 82 FR at 43855).

Comment #6: Citing CAA section 110(a)(2)(E), Earthjustice asserts that the EPA can approve a SIP revision only if it determines that the provision is not inconsistent with state law and argues that “the current proposal violates California law because it is not equivalent to BARCT” and does not achieve command-and-control equivalence as mandated by California's Health and Safety Code. Earthjustice claims that the EPA therefore cannot make the determination required in section 110 of the Act that the approval not interfere with compliance with state law.

Response #6: Earthjustice submitted substantively identical comments on a separate proposed rule published June 6, 2017, in which the EPA proposed to approve the amended

RECLAIM rules into the SIP (82 FR 25996), and a proposed rule published June 15, 2017, in which the EPA proposed to determine that the amended RECLAIM rules satisfy CAA RACT requirements for purposes of the ozone NAAQS in the South Coast ozone nonattainment area (82 FR 27451). We responded to these comments in both our September 14, 2017 final rule approving the amended RECLAIM rules (82 FR 43176) and our September 20, 2017 final rule approving California's ozone RACT SIP for the South Coast area (82 FR 43850) and incorporate those responses here (*see* 82 FR at 43178-79 and 82 FR at 43856).

Comment #7: Earthjustice claims that the EPA cannot approve the District's RACM determination because the District failed to comply with state notice requirements in adopting the 2015 NO_x RECLAIM program amendments. Earthjustice cites a recent decision of the California Superior Court for Los Angeles County ("state court") remanding the December 2015 NO_x RECLAIM program amendments on the basis that the District failed to comply with California Health and Safety Code procedural requirements in adopting the amendments. Earthjustice asserts that "[b]ecause a California court has found the [SCAQMD] violated state law in adopting the RECLAIM amendments, it would be arbitrary and capricious for EPA to approve this determination because it violates the Clean Air Act provisions in 42 U.S.C. [section] 7410."

Response #7: We disagree with the commenter's claim that the referenced state court decision precludes EPA approval of the RACM/RACT and RFP elements of the 2012 PM_{2.5} Plan. By order dated November 6, 2017, the California Superior Court for the County of Los Angeles remanded the SCAQMD Board's December 4, 2015 amendments to the RECLAIM program based on the court's finding that the District violated state procedural requirements in adopting the

amendments.⁷ The court did not, however, vacate the amendments to the program or find any substantive flaw in the amended program.⁸ On November 16, 2017, counsel for the SCAQMD confirmed that the RECLAIM program, as amended December 4, 2015, remains in effect and that the District plans to implement the amended program while considering its options for how to respond to the remand.⁹ By email dated January 10, 2018, counsel for the SCAQMD informed the EPA that the SCAQMD Governing Board had authorized the District to file an appeal of the state court decision and that this action would not affect the ongoing implementation of the December 2015 RECLAIM amendments.¹⁰ If this appeal is denied (or is otherwise unsuccessful) and the District either adopts further revisions to the RECLAIM program or determines that the amended program is deficient in some respect, we will reconsider today's action or take appropriate remedial action to ensure that the RACM/RACT and RFP elements of the 2012 PM_{2.5} Plan satisfy CAA requirements.

We note that we approved the amended RECLAIM rules into the SIP in a previous rulemaking action (82 FR 43176, September 14, 2017) in which we determined, *inter alia*, that the SIP submission containing the amended rules satisfied the applicable CAA requirements for SIP revisions, including the procedural requirements in CAA section 110(a) and 40 CFR part 51, Appendix V.¹¹ To the extent the commenter intended to argue that a procedural flaw in the

⁷ *Order Granting the Petition for a Writ of Mandate in Part*, Superior Court for the State of California, County of Los Angeles, *Communities for a Better Environment et. al v. South Coast Air Quality Management District*, Case No. BS 161399 (November 6, 2017) (finding that SCAQMD violated section 40726 of the California Health & Safety Code by adopting the 2015 RECLAIM amendments without providing additional public hearing or opportunity for comment).

⁸ *Id.*

⁹ Memorandum dated November 16, 2017, from Jeanhee Hong, EPA Region IX, Office of Regional Counsel and Wienke Tax, EPA Region IX, Air Division Planning Office, to Rulemaking docket EPA-R09-OA R-2015-0204, RE: "State court order concerning 2015 RECLAIM amendments."

¹⁰ Email dated January 10, 2018, from William Wong, Principal Deputy District Counsel, SCAQMD, to Wienke Tax, EPA Region IX, RE: "Jeanhee Hong and Wienke Tax email information."

¹¹ See 82 FR 25996, 25997 (June 6, 2017) (proposed rule) and 82 FR 43176 (September 14, 2017) (final rule). The EPA's regulations in 40 CFR part 51, Appendix V require, *inter alia*, that each SIP submission include evidence that the

District's adoption of the amended RECLAIM rules precludes the EPA's approval of those rules into the SIP under CAA section 110, such arguments should have been raised in comments on this prior rulemaking.

Other comments: We received several anonymous comments stating, *inter alia*, that emissions of greenhouse gases (GHGs) and other pollutants from California wildfires contribute to climate change and regional and global air pollution including smog, particulate matter, and toxics; that California should pay a carbon tax on GHG emissions from wildfires; that oil and gas regulations should be rescinded; and that the CAA must be enforced to preserve air quality and quality of life.

Response: These comments fail to identify any specific issue that is germane to our action on the 2012 PM_{2.5} Plan.

III. Final Action

The EPA is finalizing approval of the following elements of the 2012 PM_{2.5} Plan under CAA section 110(k)(3):

- the RACM/RACT element as meeting the requirements of CAA sections 172(c)(1) and 189(a)(1)(C); and
- the RFP element as meeting the requirements of CAA section 172(c)(2).

As a result of this approval, the offset sanction in CAA section 179(b)(2), which would have applied in the South Coast PM_{2.5} nonattainment area 18 months after the effective date of our partial disapproval of the 2012 PM_{2.5} Plan dated April 14, 2016, and the highway funding sanction in CAA section 179(b)(1), which would have applied in the area six months after the offset sanction is

State followed all of the procedural requirements of the State's laws and constitution in adopting the plan. 40 CFR part 51, Appendix V, section 2.1(e). The statutory deadline for filing a petition for judicial review of this action was November 13, 2017 (see 82 FR 43176, 43179).

imposed, are permanently terminated. Additionally, this approval action removes the obligation on the EPA to promulgate a federal implementation plan because California has corrected the deficiencies and the EPA has approved the related plan revisions.

IV. Statutory and Executive Order Reviews

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);
- Is not an Executive Order 13771 (82 FR 9339, February 2, 2017) regulatory action because SIP approvals are exempted under Executive Order 12866;
- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);

- Does not have Federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. section 801 *et seq.*, as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of

the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ammonia, Incorporation by reference, Intergovernmental relations, Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Authority: 42 U.S.C. 7401 *et seq.*

Dated: January 24, 2018.

Alexis Strauss,
Acting Regional Administrator,
Region IX.

Part 52, Chapter I, Title 40 of the Code of Federal Regulations is amended as follows:

PART 52--APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

Subpart F—California

§ 52.220 Identification of plan—in part.

2. Section 52.220 is amended by adding paragraph (c)(439)(ii)(B)(6) to read as follows:

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(c) * * *

(439) * * *

(ii) * * *

(B) * * *

(6) The PM_{2.5}-related portions of Appendix VI (‘‘Reasonably Available Control Measures (RACM) Demonstration’’) of the Final 2012 Air Quality Management Plan (December 2012).

* * * * *

§ 52.237 [Amended]

1. Section 52.237 is amended by removing and reserving paragraph (a)(7).

[FR Doc. 2018-02677 Filed: 2/9/2018 8:45 am; Publication Date: 2/12/2018]